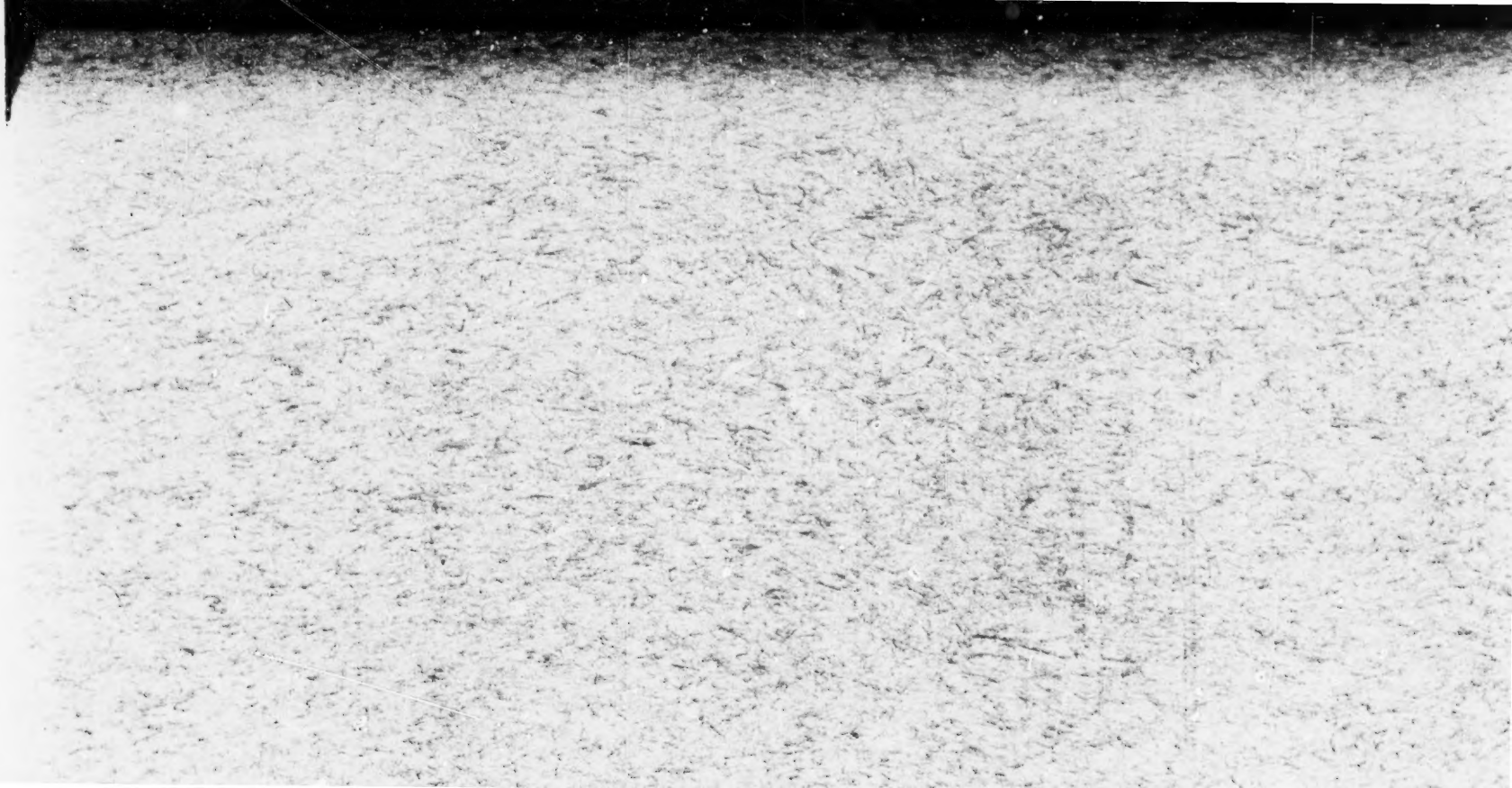

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No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR, PETITIONER

v.

NEIL MCELROY, A. TYLER PORT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

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In the Brief for the Respondents (pp. 23–24), it was noted that there was pending an amendment to the industrial security regulations which would require that the level of classified information to which access is sought (Confidential, Secret, or Top Secret) be taken into account in determining whether such access is clearly consistent with the interests of national security. On March 19, 1959, the Acting Secretary of Defense approved, effective immediately, Change No. 3 to Department of Defense Directive 5220.6, formally adopting that amendment. In the Appendix to this Memorandum, filed pursuant to Rule 41(5) of the Rules of this Court, we have repro-

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duced the complete text of the Directive as thus amended. The new matter added by the amendment is italicized and that deleted is shown in brackets (see ¶¶ 3(b), 12, 13(a), 17(d), 20(e)).

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1959.

APPENDIX

Department of Defense Directive No. 5220.6 (20 Fed. Reg. 1553), amended by Change No. 3, effective March 19, 1959, provides:

INDUSTRIAL PERSONNEL SECURITY REVIEW REGULATION

SECTION I

GENERAL

1. *Purpose.* This regulation prescribes the uniform standard and criteria for determining the eligibility of contractors, contractor employees, and certain other individuals as set forth herein, to have access to classified defense information. It also establishes the administrative procedures governing the disposition of all cases in which a military department, or activity thereof, has made a recommendation or determination (a) with respect to the denial, suspension or revocation of a clearance of a contractor or contractor employee, and (b) with respect to the denial or withdrawal of authorization for access by certain other individuals.

2. *Definitions.* For the purpose of this regulation:

a. The term "contractor" means an industrial, educational, commercial, or other entity which has executed a contract or a Department of Defense Security Agreement (DD Form 441) with a Department of Defense activity.

b. The term "contractor employee" means any United States citizen or immigrant alien who is an official or employee of a contractor.

c. The term "clearance" means an administrative determination, in accordance with approved policy, that a contractor or contractor employee is eligible to have access to classified information of specified categories classified in accordance with Executive Order 10501 which is necessary for the accomplishment of the particular missions established by the military departments or activities thereof. A clearance is an administrative determination that the granting of such approval is clearly consistent with the interests of the national security. In the case of a contractor, a clearance is an approval for the contractor involved to have access to specified categories of classified information necessary in connection with the bidding, negotiation, award, performance, or termination of contracts with a military department or activities thereof which involves access to such information. In the case of a contractor employee, a clearance is an approval for the employee to have access to specified categories of classified information necessary for the performance of his work with a particular contractor on contracts with a military department or activity thereof which involve access to such information.

3. *Policy.*

a. While the Department of Defense will assume, unless information to the contrary is received, that all contractors and contractor employees are loyal to the Government of the United States, the responsibilities of the military establishment necessitate vigorous application of policies designed to minimize the security risk incident to the use of classified information by such contractors and contractor employees. Therefore, adequate measures will be taken to provide continuing assurance that no contractor or contractor employee will be granted a clearance if available infor-

mation indicates that the granting of such clearance may not be clearly consistent with the interests of the national security. At the same time, every possible safeguard within the limitations of national security will be provided to ensure that no contractor or contractor employee will be denied a clearance without an opportunity for a fair hearing.

b. The denial or revocation of a clearance in and of itself does not necessarily carry any implication that the individual is disloyal to the United States. Denial or revocation *of a clearance for access to classified information of a specific classification category or categories* results from a determination that the granting of a clearance is not clearly consistent with the interests of the national security. Such a determination would, of course, be made in the case of a disloyal individual. However, there are many other reasons, unrelated to loyalty, which may result in such a determination and thus require the denial or revocation of a clearance. Since a clearance relates only to access to classified defense information, the denial or revocation of a clearance to a contractor or contractor employee does not preclude his participation in unclassified work.

4. *Release of Information.* All personnel in the Program will comply with applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information. In addition, in a case involving a contractor employee the

contractor concerned will be advised only of the final determination in the case to grant, deny, or revoke clearance, and of any decision to suspend a clearance granted previously pending final determination in the case. The contractor will not be given a copy of the Statement of Reasons issued to the contractor employee except at the written request of the contractor employee concerned.

5. *Program.* There is hereby established the Industrial Personnel Security Review Program, consisting of the following elements:

a. The Office of Industrial Personnel Security Review.

b. The Industrial Personnel Security Screening Board (hereinafter called the Screening Board).

c. The Industrial Personnel Security Hearing Boards (hereinafter called the Hearing Boards).

d. The Industrial Personnel Security Review Board (hereinafter called the Review Board).

6. *Scope of Program.*

a. The procedures established in this regulation will be applicable to all cases in which:

(1) An activity of a military department has recommended that the clearance of a contractor or contractor employee be denied or revoked;

(2) An activity of a military department has suspended a clearance of a contractor or contractor employee;

(3) An activity of a military department has denied or withdrawn authorization for access to classified information to an individual, other than an immigrant alien or foreign national, who is not an official or employee of a contractor nor of the Government, but whose access as a recurrent visitor is considered necessary by a contractor and who falls within categories established by the Director under this subparagraph; or

(4) Action is requested by the head of the military department concerned, or by the Secretary of Defense.

b. Once a clearance has been suspended, an authorization for access denied or withdrawn, or a Statement of Reasons issued, these procedures will be applicable to individuals even if their employment has been terminated.

c. Except at the request of the Secretary of a military department concerned, or the Secretary of Defense, determinations will not be made under the Program in cases:

(1) Involving access to research, development and production of cryptographic equipment;

(2) Originating outside the continental limits of the United States, its territories, its possessions, and Puerto Rico;

(3) Involving denial, suspension or revocation of clearance of a contractor on grounds pertaining solely to the physical elements of security;

(4) Involving solely a determination under the provisions of Section 10(j), Act of July 2, 1926 (44 Stat. 787, 10 U.S.C. 310(j)); and

(5) Involving contractors which are under foreign ownership, control or influence.

SECTION II

ORGANIZATION

7. a. *Office of Industrial Personnel Security Review.*

1. The Office of Industrial Personnel Security Review will be headed by a civilian Director appointed by the Secretary of Defense after consultation with the Secretaries of the Military Departments. The Director shall be responsible to the Secretary of Defense

and the Secretaries of the Army, Navy, and Air Force, for administering the Industrial Personnel Security Review Program, including its constituent boards. He will be responsible for ensuring that the Screening, Hearing, and Review Boards are provided with such advice, assistance, and personnel, including legal and security advisors, as he considers necessary to enable the Boards properly to carry out their functions under this Program. He will have such professional, technical, and clerical staff as he may require to carry out his responsibilities, as set out herein, and such other related responsibilities as may be prescribed. The Director is authorized to obtain information, assistance, and advice directly from any activity of the Department of Defense, and, in accordance with established policies, from other agencies of the Government. The Director will bring to the attention of the Secretary of Defense and the Secretaries of the Military Departments any case or significant development which, in his judgment, warrants their attention. He shall prepare monthly reports on the case loads of the boards and the status of cases pending before the boards. The Director may issue such supplemental instructions, not inconsistent with this regulation, as may be desirable for the administration and efficient operation of this Program, including rules for the processing of cases, the conduct of screenings, hearings and reviews, and for guidance in the application of the standard and criteria set forth in Section III.

2. The Director, in consultation with appropriate security offices, will develop such implementing procedures as are necessary to safeguard the security of classified information and investigative reports made available to any element of the Program.

3. The Office of Industrial Personnel Security Review will be located in the Pentagon and will be supported administratively by the Office of the Secretary of Defense. The military departments will make appropriate allocations of funds, military and civilian personnel, and personnel spaces.

4. Communications will be addressed to the Director, Office of Industrial Personnel Security Review, The Pentagon, Washington 25, D.C.

b. *Department of the Army.*

The Department of the Army will have operational control and supervision over the Central Index Personnel and Facility Security Clearance File (hereinafter called the Central Index File). The complete files of the records of cases processed by the Army-Navy-Air Force Personnel Security Board, the Industrial Employment Review Board, the Eastern, Central, and Western Industrial Personnel Security Boards, and the Boards established by this regulation shall be maintained as a part of the Central Index File.

8. *Industrial Personnel Security Screening Board.*

a. The Screening Board will be located in the Office of Industrial Personnel Security Review and will be responsible for the performance of the duties and functions hereinafter prescribed.

b. The Secretary of each military department will appoint one or more members, military or civilian, to the Screening Board, as the case load requires. Any three members so appointed, one from each military department, will constitute a quorum-panel so that more than one panel may be convened at the same time. The Director will designate one member to serve as Chairman of the Screening Board.

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c. The Screening Board will have jurisdiction over all cases which are referred to it in accordance with this regulation.

9. *Industrial Personnel Security Hearing Boards.*

a. There are hereby established three Hearing Boards to be known as the New York, the Chicago and the San Francisco Industrial Personnel Security Hearing Boards and to be located in such cities respectively. Additional Hearing Boards may be established by the Director with the approval of the Secretaries of the Army, Navy and Air Force. Panels of existing Hearing Boards, convened at other locations, will be utilized when necessary to ensure prompt and convenient hearings. Each Hearing Board will be responsible for the performance of the duties and functions hereinafter prescribed.

b. The Secretary of each military department will appoint one or more members, military or civilian, to each Hearing Board, as the case load requires. Appropriate local commanders designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. In the letters submitting the nominations the designated commander will include a statement that in his personal opinion the nominees are persons of responsibility and are of mature judgment and balance who can be counted upon to proceed in a fair and judicial manner. The Director will designate one civilian member to serve as Chairman of each Board. Any three members, one from each military department, and including at least one civilian, will constitute a quorum-panel so that more than one panel may be convened at the same time, if required.

c. Each Hearing Board will have jurisdiction to

hear and determine all cases referred to it in accordance with this regulation.

d. The respective Hearing Boards will be located as indicated in subparagraph a. of this paragraph, but may convene at such locations or commands as the Director deems appropriate and convenient.

e. (1) Except as provided in subparagraph f. of this paragraph, the Hearing Boards will be supported administratively by the following military commanders:

New York Industrial Personnel Security Hearing Board: Commanding General, First Army.

Chicago Industrial Personnel Security Hearing Board: Commander, Air Materiel Command.

San Francisco Industrial Personnel Security Hearing Board: Commandant, 12th Naval District.

(2) Each of the above-named commanders will be responsible for the administration of the Board located within his command and for the development of implementing procedures to safeguard classified information made available to the Board. Each commander will appoint an Executive Secretary, a Security Advisor, and a Legal Advisor, and will make available such other personnel as may be required by the Director to assist in administering each Hearing Board. The Executive Secretary will be responsible for establishing and maintaining necessary administrative services, including equipment, supplies, files and records; processing of correspondence; reviewing the files for completeness; docketing the cases; and setting an approved time and place for hearing. The Security Advisor and the Legal Advisor will furnish advice and assistance to the Board.

f. Whenever, pursuant to direction of the Director, a panel of a Hearing Board established under subparagraph a. of this paragraph is convened at any of the following named locations, the commanders named, respectively, will provide or arrange for the administrative support needed by such Hearing Board panel in order to discharge its official business at such locations:

Alaska: Commander, Alaskan Air Command.

Virgin Islands, Canal Zone, and Puerto Rico: Commanding General, United States Army, Caribbean.

Guam, American Samoa, Wake, Midway, Guano Islands and Hawaii: Commandant, 14th Naval District.

g. As a verbatim transcript will be required of each hearing before a Hearing Board, it is the responsibility of each of the above-mentioned commanders to provide the necessary personnel and facilities for the prompt making of such transcripts.

h. Where a panel of a Hearing Board is convened at a location or command outside the jurisdiction of the above-mentioned commanders, the military commander designated by the Director will provide office space, facilities, clerical personnel for each hearing and for the prompt making of a verbatim transcript thereof.

10. *Industrial Personnel Security Review Board.*

a. The Review Board will be located in the Office of Industrial Personnel Security Review and will be responsible for the performance of the duties and functions hereinafter prescribed.

b. The Secretary of each military department will appoint one or more members, military or civilian, to the Review Board as the case load requires. The Director will designate one member to serve as Chair-

man of the Review Board. Any three members so appointed, one from each military department, will constitute a quorum-panel so that more than one panel may be convened at the same time. One of the members of each quorum-panel must be a qualified lawyer and each quorum-panel will include at least one civilian.

c. The Review Board will have jurisdiction over all cases referred to it in accordance with this regulation.

11. *Security Clearance of Nominees.*

No person will be appointed Director, member or alternate, Executive Secretary, Security Advisor, or Legal Advisor of any Board established under this Program, until such person has been granted a Top Secret security clearance based on a background investigation.

SECTION III

STANDARD AND CRITERIA

12. *Standard for Denial of Clearance.* Clearance *for access to classified information of a specific classification category or categories* shall be denied or revoked if it is determined, on the basis of all the available information, that access to classified information by the person concerned is not clearly consistent with the interests of the national security.

13. *Criteria for Application of Standard in Cases Involving Individuals.*

a. The activities and associations listed below which may be the basis for denial or revocation of clearance *for access to classified information of a specific classification category or categories* are of varying degrees of seriousness *depending upon all the factors*

in a particular case. Therefore, the ultimate determination of whether *such* clearance should be granted or continued must be an over-all common-sense one, based on all available information.

(1) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason or sedition.

(2) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(3) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(4) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.

(5) Intentional, unauthorized disclosure to

any person of classified information, or of other information, disclosure of which is prohibited by law.

(6) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(7) Participation in the activities of an organization established as a front for an organization referred to in subparagraph (4) above when his personal views were sympathetic to the subversive purposes of such organization.

(8) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

(9) Participation in the activities of an organization referred to in subparagraph (4) above in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

(10) Sympathetic interest in totalitarian, Fascist, Communist, or similar subversive movements.

(11) Sympathetic association with a member, or members, of an organization referred to in subparagraph (4) above. (Ordinarily, this will not include chance or occasional meetings, nor contacts limited to normal business or official relations.)

(12) Currently maintaining a close continuing association with a person who has engaged

in activities or associations of the type referred to in subparagraphs (1) through (10) above. A close continuing association may be deemed to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such person.

(13) Close continuing association of the type described in subparagraph (12) above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(14) Willful violation or disregard of security regulations.

(15) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(16) Any deliberate misrepresentations, falsifications, or omission of material facts from a Personal Security Questionnaire, Personal History Statement, or similar document.

(17) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug, addiction, or sexual perversion.

(18) Acts of a reckless irresponsible or wanton nature which indicate such poor judgment and instability as to suggest that the individual might disclose classified information to unauthorized persons, or otherwise assist such persons, whether deliberately or inadvertently, in activities inimical to the security of the United States.

(19) Any illness, including any mental condition, of a nature which, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(20) Any facts which furnish reason to believe that the individual may be subjected to

coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(21) The presence of a spouse, parent, brother, sister, or offspring in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives.

(22) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a Congressional or legislative committee, or Federal or State court or other tribunal, regarding charges of his alleged disloyalty or other misconduct.

b. Legitimate labor activities shall not be considered in determining whether clearance should be granted or continued.

14. *Criteria for Application of Standard in Cases Involving Contractors.* The granting or continuing of a facility clearance to a contractor is not clearly consistent with the interests of the national security if the clearance of an officer, director, owner, or key employee of the contractor, who is required to be cleared in connection with a facility security clearance has been, or would be, denied under the standard and criteria set forth in paragraphs 12 and 13 above.

SECTION IV

PROCESSING OF CASES

15. *Emergency Action.* In accordance with existing directives, activities of military departments will not deny a clearance to a contractor or contractor employee, and ordinarily will not suspend a previously granted clearance. However, in exceptional

cases officials authorized by the military department concerned may suspend a clearance previously granted to a contractor employee (but not a clearance granted to a facility) when, in the opinion of the authorized official, the contractor employee's continued access to classified information, pending action by the Screening Board, would constitute an immediate threat to the security interests of the United States.

16. *Forwarding Cases.* Activities of military departments will forward to the Director all cases prescribed in paragraph 6a above, together with the complete file, including the recommendation in the case, the reasons therefor, and all other available information and material relevant to a determination in the case. On receipt of the file, the Director, after ensuring that it has been properly prepared and transmitted, will forward it to the Screening Board for appropriate action.

17. *Initial Adjudication Procedures (Screening Board Action).*

a. The Screening Board will review each case referred to it by the Director and will determine in accordance with the standard and criteria set forth in Section III whether the reported information warrants (1) the granting or continuing of a clearance or (2) further processing as set forth below. If an emergency suspension of clearance has already been effected pursuant to paragraph 15, the Board will review such action to determine its propriety.

b. With respect to any case pending before it, the Screening Board may request the Director to:

(1) Request further investigation, specifying the particular points on which the Board feels its information is not adequate.

(2) Issue to the person concerned such written interrogatories as the Board may deem desirable.

(3) Arrange for an interview with the person concerned.

c. The Screening Board may, with respect to any case pending before it, determine at any time that an existing clearance should be suspended. Upon any such determination, the Director will notify the person concerned, the contractor, the security office of the cognizant military department and the agency which forwarded the case to him.

d. If the Screening Board determines that a clearance *for access to classified information of a specific classification category or categories* should be granted or continued in effect, it will prepare its finding in the form set forth in paragraph 20e. The Director will notify the activity which forwarded the case to him of the determination and instruct it to effect the clearance.

e. If the Screening Board concludes on the basis of the information available to it and in accordance with the standard and criteria set forth in Section III that the case does not warrant a security finding favorable to the person concerned, it will prepare a Statement of Reasons. The Statement of Reasons will be as specific and in as great detail as, in the opinion of the Board, security considerations permit, in order to provide the person concerned with sufficient information to enable him to prepare his defense. Whenever the Board issues a Statement of Reasons, it will suspend any clearance previously granted to the person concerned.

f. The Director will forward to the person concerned, by registered mail with a request for a return receipt signed "by addressee only," the Statement of Reasons and a copy of this regulation. He will also inform the person concerned of his clearance status

pending final determination in his case and of his rights:

(1) To answer the Statement of Reasons in writing under oath or affirmation and to submit such statements or affidavits by third parties or other documentary evidence as he may desire; and

(2) To appear, at his request, before a Hearing Board in person and/or by counsel or representative of his own choosing and to present evidence in his behalf including testimony of witnesses. The Director will also inform him that his clearance will be denied or revoked finally without further action unless, within ten calendar days after he receives his notice, he either submits the written material as described in subparagraph (1), requests a hearing, or requests the Director for additional time in which to answer.

g. If, within the time authorized, the person concerned:

(1) Requests a hearing, the Director will forward the complete file to the Executive Secretary of the Hearing Board which the Director shall designate;

(2) Submits written material pursuant to subparagraph f(1) above but does not request an opportunity to appear at a hearing, the Director will forward the complete file either to a Hearing Board for determination on the basis of the file or directly to the Review Board for action in accordance with paragraph 22.

(3) Does not reply, the Director will instruct the activity which forwarded the case to him to deny or revoke finally the clearance, as appropriate, and will also advise the person concerned.

h. All determinations by the Screening Board will be made in executive session and will be in writing with a statement setting forth the basis for its action.

Favorable determination shall be by unanimous vote. No security advisor or legal advisor will be present when the Board deliberates and reaches its determination.

18. *Action by Hearing Board.*

a. On receipt of the file, the Executive Secretary of the Hearing Board, after consulting with the Chairman, will set a time and place for the hearing and inform the person concerned thereof. The hearing will be held as soon as practicable, allowing the person concerned a reasonable time within which to prepare his case and obtain witnesses. The Executive Secretary will also inform the person concerned that any further answer to the Statement of Reasons, or additional statements, affidavits or other documentary material he may care to file should be submitted directly to the Executive Secretary.

b. Each individual case file referred to a Hearing Board will be studied, prior to the hearing, by each Board member who is to participate in the determination of the case, so that the Board will be able to conduct the hearing in an intelligent manner. Board members must bear in mind constantly when studying the file prior to the hearing that the investigative reports, Statement of Reasons, and other information in the file represent an incomplete presentation of the case, since the person concerned may not yet have presented his entire defense. Accordingly, Board members should not form any premature conclusions as to the eventual determination of the case.

c. The Board may, on its own motion, request the attendance of such witnesses as it deems appropriate. Invitations should state the time and place where the hearing will be held and that the Government cannot pay witness fees or reimbursement for travel or other expenses. Employees of activities of the Department

of Defense who are invited to appear as witnesses will be encouraged to attend and no charge to annual leave will be made for attending.

d. If a person who has requested an opportunity to appear fails to appear at the time and place set for the hearing or at any postponement thereof and has not requested the Hearing Board to determine his case on the basis of the file, including any written material he may have submitted, the Executive Secretary will return the complete file to the Director without further action by the Hearing Board. The Director will then take action under paragraph 17g(3).

19. *Conduct of Hearings.*

a. Hearings are designed to accomplish two major purposes: (1) to permit the person concerned to present evidence in his behalf, and (2) to ascertain all the relevant facts in the case to aid in reaching a fair and impartial determination. Accordingly, such hearings are not to be conducted with the formality of a court proceeding, but rather as administrative inquiries held for the purpose of affording the person concerned an opportunity to be heard and to permit the Board to inquire fully into the matters related to the particular case.

b. Hearings will be conducted in an orderly manner and in an atmosphere of dignity and decorum. They may be attended only by the members of the Board participating in the hearing, the person concerned and his lawyer or representatives, authorized personnel of activities of the Department of Defense, necessary clerical personnel, and such witnesses as the Government or the person concerned may desire. The person concerned and his lawyer or representatives have the right to be present throughout the hearing. Unless the Board rules otherwise, a witness may be present only when he is testifying.

c. The Security Advisor will be present at the hearing to furnish advice and assistance to the Board whenever required. As a matter of standard procedure a Legal Advisor will also be present at the hearing to furnish legal advice to the Board and to assist it in making certain that the record is complete. Both the Security Advisor and the Legal Advisor may interrogate witnesses who appear before the Board (including the person concerned, if he chooses to testify). In the event the person concerned appears without a lawyer, the Legal Advisor will advise him of his rights and assist him with respect to procedure. No function performed by the Legal Advisor, however, will relieve the Board of its responsibilities for ensuring that the record is complete, that the person concerned is advised of his rights, and that all pertinent information, both favorable and unfavorable, is considered. In the discretion of the Board, both the Security Advisor and the Legal Advisor may attend executive sessions of the Board, but they will not be present when the Board deliberates its findings and reaches its determination.

d. Strict rules of evidence need not be followed. The Board may admit in evidence any material, either oral or written, which in the minds of reasonable men is of probative value in determining the issues involved, but reasonable bounds with respect to relevancy, materiality and competency of evidence will be maintained. Efforts shall be made to obtain the best evidence as to a particular issue. Hearsay evidence may be admitted without regard to technical rules of admissibility and shall be accorded such weight as, in the opinion of the Board, the circumstances warrant.

e. Hearings will be called to order by the Chairman, who shall make an opening statement substantially as follows:

> The ---------- Industrial Personnel Security Hearing Board appointed by the Secretaries of the Army, Navy and Air Force is now ready to proceed with the hearing in the case of (name of person concerned). This is not a court of law and strict rules of evidence and court procedure need not be followed. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire fully into the matters related to your case. You have the right to be represented by a lawyer or other representative and to present witnesses and other evidence in your behalf. You can assist the Board in arriving at a fair and just determination in your case by giving full and frank answers to all questions the Board may have and by confining your attention to matters related to your case. The transcript to be made of this hearing will not include all material in the file of the case in that it will not include reports of investigation conducted by the Federal Bureau of Investigation or other investigative agencies which must be held in confidence. Neither will it contain information which might reveal the identity of confidential informants or the source of confidential evidence. The transcript will contain only the statements made, testimony given and exhibits received in open sessions of this hearing. A copy of this transcript, less exhibits, will be furnished you or your representative without cost if you request it.

f. Following the opening statement the Chairman will read the Statement of Reasons and inform the person concerned that, if he desires, he or his lawyer

or representative may then make a general opening statement. Each witness, before testifying, will be informed that Section 1001 of Title 18, United States Code, makes it a criminal offense, punishable by a maximum of five (5) years imprisonment, $10,000 fine, or both, to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.

g. Normally Government witnesses, if any, will then be heard.

h. The person concerned will then present his case, including his own testimony (if he desires to testify), testimony of other witnesses and written evidence.

i. The Board will, when appropriate, amend the Statement of Reasons to conform it with the information available. When such amendments are made, the Board may grant the person concerned such additional time as it deems appropriate to answer such amendments and to secure and present evidence concerning them.

j. The Board may recess the hearing at any time on the request of the person concerned or upon its own motion. When it desires, the Board may meet in executive session but no transcript of executive sessions will be made.

k. Before the Board adjourns the hearing, the Chairman will ask the person concerned whether he desires additional time to secure and present additional evidence or to submit a brief. If the person concerned does desire to present such additional material, the Board shall determine the time within which it must be presented and the form in which it will be received. The Chairman will also advise the person concerned that announcement of the de-

termination in his case will be made by the Director, Office of Industrial Personnel Security Review.

l. A verbatim transcript (in quintuplicate) will be made of the hearing and such transcript will become a permanent part of the file. The person concerned or his designated representative will be furnished without cost one copy of the transcript, less the exhibits, upon his request. The transcript will be reviewed by the Board in consultation with the Security Advisor prior to release to ensure that it contains no classified information.

m. If the person concerned or his lawyer or representative desires to submit corrections in the transcript to the Board, he will note the corrections on a separate statement, designating the page and line. The statement of corrections must be filed within the time set by the Board. The Board will determine what corrections are allowable, will enter on the transcript by marginal notation the corrections which are allowed, and will enter on the statement filed by the person concerned the corrections which are rejected. This statement will be made a permanent part of the record. The Board in its discretion may call upon the person concerned, or his counsel or representative, for a discussion of the corrections prior to its determination thereon. Corrections will be allowed solely for the purpose of conforming the transcript to the actual testimony.

20. *Hearing Board Determination.*

a. As promptly as possible after the hearing, the Board shall meet in executive session and after full consideration of the complete file, including all evidence, arguments, and briefs in the case, it will reach its determination in accordance with the standard and criteria set forth in Section III.

b. The Board will take into consideration the fact that the person concerned may have been handicapped in his defense by the non-disclosure to him of classified information or by his lack of opportunity to identify or cross-examine persons constituting sources of information. Accordingly, it will weigh each item of derogatory information carefully in the light of its recency and relative seriousness, the amount and quality of supporting evidence, the attendant circumstances, whether the item was given under oath or affirmation, whether or not it is relevant to the Statement of Reasons, and whether or not the person concerned has had an opportunity to rebut it.

c. The determination, which shall be reached by majority vote, shall be signed by the members and made a permanent part of the record in the case.

d. The determination shall include a finding with respect to each of the allegations set forth in the Statement of Reasons. Each such finding shall be followed by a detailed discussion of the evidence which the Board has relied upon in making such finding.

e. The determination shall also include a statement in the following form:

> [The Board determines that on all the information available to it the granting of clearance to _____ for access to classified information (is) (is not) clearly consistent with the interests of the national security.]
>
> (1) *The Board determines that on all the information available to it the granting of clearance to _____ for access to information classified up to and including _____ is clearly consistent with the interests of national security, or*
>
> (2) *The Board determines that on all the information available to it the granting of*

clearance to _____ for access to information classified _____ (Top Secret or Secret) is not clearly consistent with the interests of national security. The Board determines, however, that the granting of access to information classified up to and including _____ (Secret or Confidential) is clearly consistent with the interests of national security, or

(3) *The Board determines that on all the information available to it the granting of clearance to _____ for access to classified information at any level is not clearly consistent with the interests of the national security.*

This statement shall be followed by a discussion of why the aforementioned findings with respect to the allegations justify the determination.

f. If the decision is not unanimous, a signed minority opinion shall be filed, setting forth the reasons for the dissent in the manner prescribed in subparagraphs d and e above.

21. *Procedure After Determination by the Hearing Board.*

a. After the Hearing Board has considered a case and reached a determination, the Executive Secretary promptly will forward the complete file to the Director who will examine it for completeness and compliance with the procedures set forth in this regulation. If the Director is not satisfied with the state of the record in the case, he may return the case to the Hearing Board for further action. In any case in which the Director is satisfied with the record and in which the determination of the Hearing Board is unanimous, he may announce that determination as the final determination of the case. He will notify the person concerned, the activity initially referring the case, and other interested agencies of this deter-

mination. The Director also will issue instructions for the granting, continuing, denying or revoking of clearance in accordance with the determination. If the determination of the Hearing Board is not unanimous, the Director shall forward the case to the Review Board. He also may forward to the Review Board cases which present novel issues or unusual circumstances.

b. The determination of the Hearing Board as announced by the Director pursuant to paragraph a above shall be final subject only to:

(1) consideration by the Review Board at the request of the Director, the Secretary of Defense, or the Secretary of any military department; or

(2) reconsideration by the Hearing Board at the request of the Director on the ground of newly discovered evidence or for other good cause shown.

22. *Action by the Review Board*

a. The Review Board will review each case submitted to it on the written record and will make its determination in each case by majority vote in accordance with the standard and criteria set forth in Section III. It may adopt, modify or reverse the findings or the determination of the Hearing Board. In the event the Review Board modifies the findings or reverses the determination of the Hearing Board, the Review Board determination shall be accompanied by a discussion of the evidence and the reasons relied upon for its action. If the decision is not unanimous, a minority opinion shall be filed.

b. After the Review Board has reached its determination, the Director will notify the person concerned, the activity initially referring the case, and other interested agencies of the final determination in the case. The Director will also issue instructions for the grant-

ing, continuing, denying or revoking of clearance in accordance with the determination.

c. Determinations of the Review Board shall be final, subject only to:

(1) Reconsideration on its own motion or at the request of the person concerned, addressed through the Director, on the ground of newly discovered evidence or for other good cause shown;

(2) Reconsideration by the Review Board at the request of the Secretary of Defense or the Secretary of any military department; or

(3) Reversal by the Secretary of Defense, or reversal by joint agreement of the Secretaries of the three military departments at the request of one of such Secretaries.

SECTION V

MISCELLANEOUS

23. *Pending Cases.*

a. All cases pending before the Eastern, Central or Western Industrial Personnel Security Boards in which a Statement of Reasons has been issued before the effective date of this regulation will be processed to completion in accordance with the provisions of the Industrial Personnel and Facility Security Clearance Program approved by the Secretaries of the Army, Navy and Air Force on 4 May 1953, as amended. Promptly after each such case has been completed or closed, those Boards will forward the file to the Director for inclusion in the Central Index File.

b. All other cases pending on the effective date of this regulation will be processed under this regulation. The Eastern, Central and Western Industrial Personnel Security Boards will forward promptly to the Director files of all such cases for processing. Those Boards also will forward to the Director, for inclusion in the Central Index File, the files of all cases which have been completed or closed prior to the effective date of this regulation.

24. *Reconsideration of Prior Decisions.*

a. Decisions of the Industrial Employment Review Board and of the Appeal Divisions of the Eastern, Central and Western Industrial Personnel Security Boards which denied or revoked a clearance may be reconsidered by the Review Board at the request of the person concerned, addressed through the Director, on the grounds of newly discovered evidence or for other good cause shown.

b. Decisions of the Army-Navy-Air Force Personnel Security Board and of the Screening Divisions of the Eastern, Central and Western Industrial Personnel Security Boards which denied or revoked a clearance may be reconsidered by the Screening Board at the request of the person concerned, addressed through the Director, for good cause shown.

c. In cases where a clearance has been previously granted and an activity of a military department receives additional derogatory information which was not considered by a Board at the time it decided the case and the commander of the activity is of the opinion, after reviewing the complete file including the record of any prior proceedings, that revocation

of the prior clearance is warranted, he will forward the case to the Director, through appropriate channels, for referral to the Screening Board in accordance with paragraph 17.

25. *Notices to Counsel or Other Representatives.*

Where the person concerned designates in writing to the Director or to the Executive Secretary of a Hearing Board a lawyer or other individual to represent him in any proceeding under this regulation, such representative will be furnished a copy of all communications which are sent to the person concerned.

26. *Monetary Restitution.*

In cases where a final determination is favorable to a contractor employee, the department whose activity originally forwarded the case to the Director will reimburse the contractor employee in an equitable amount for any loss of earnings during the interim resulting directly from a suspension of clearance. Such amount shall not exceed the difference between the amount the contractor employee would have earned at the rate he was receiving on the date of suspension and the amount of his interim net earnings. No contractor employee shall be compensated for any increase in his loss of earnings caused by his voluntary action in unduly delaying the processing of his case under this regulation.

27. *Changes in Existing Directives.*

This regulation supersedes the Industrial Personnel and Facility Security Clearance Program approved by the Secretaries of the Army, Navy and Air Force on 4 May 1953, as amended, and the provisions of

any other directives which are inconsistent with this regulation.

28. *Effective Date.*

This regulation becomes effective sixty calendar days after it is approved by the Secretary of Defense.

Recommended by:

ROBERT T. STEVENS,
Secretary of the Army.

Date: February 2, 1955.

C. S. THOMAS,
Secretary of the Navy.

Date: February 2, 1955.

H. E. TALBOTT,
Secretary of the Air Force.

Date: February 2, 1955.

Approved by:

C. E. WILSON,
Secretary of Defense.

Date: February 2, 1955.

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